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**SUBSTITUTE SENATE BILL 5692**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Berkey, Benton, Prentice and Keiser)

READ FIRST TIME 02/25/05.

1       AN ACT Relating to tax refund anticipation loans; adding a new  
2 chapter to Title 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       NEW SECTION. **Sec. 1.** This chapter may be known and cited as the  
5 tax refund anticipation loan act.

6       NEW SECTION. **Sec. 2.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires otherwise.

8       (1) "Facilitator" means a person who receives or accepts for  
9 delivery an application for a refund anticipation loan, delivers a  
10 check in payment of refund anticipation loan proceeds, or in any other  
11 manner acts to allow the making of a refund anticipation loan.  
12 "Facilitator" does not include a bank, thrift, savings association,  
13 industrial bank, or credit union operating under the laws of the United  
14 States or this state, an affiliate that is a servicer for such an  
15 entity, or any person who acts solely as an intermediary and does not  
16 deal with a taxpayer in the making of the refund anticipation loan.

17       (2) "Person" means an individual, a firm, a partnership, an  
18 association, a corporation, or other entity.

1 (3) "Lender" means a person who extends credit to a borrower in the  
2 form of a refund anticipation loan.

3 (4) "Taxpayer" means an individual who files a federal income tax  
4 return.

5 (5) "Borrower" means a taxpayer who receives the proceeds of a  
6 refund anticipation loan.

7 (6) "Refund anticipation loan" means a loan borrowed by a taxpayer  
8 from a lender based on the taxpayer's anticipated federal income tax  
9 refund.

10 (7) "Refund anticipation loan fee" means the charges, fees, or  
11 other consideration imposed by the facilitator or the lender for a  
12 refund anticipation loan. This term does not include any charge, fee,  
13 or other consideration usually imposed by the facilitator in the  
14 ordinary course of business for nonloan services, such as fees for tax  
15 return preparation and fees for electronic filing of tax returns.

16 (8) "Refund anticipation loan fee schedule" means a listing or  
17 table of refund anticipation loan fees charged by the facilitator or  
18 the lender for three or more representative refund anticipation loan  
19 amounts. The schedule shall list separately each fee or charge  
20 imposed, as well as a total of all fees imposed, related to the making  
21 of refund anticipation loans. The schedule shall also include, for  
22 each representative loan amount, the estimated annual percentage rate  
23 calculated under the guidelines established by the federal truth in  
24 lending act, 15 U.S.C. Sec. 1601 et seq.

25 NEW SECTION. **Sec. 3.** (1) For all refund anticipation loans, a  
26 facilitator must provide a clear disclosure statement to the borrower,  
27 prior to the borrower's completion of the application. The disclosure  
28 statement required under this subsection must be printed in a minimum  
29 of ten-point type. Further, the disclosure statement must contain the  
30 following:

31 (a) The refund anticipation loan fee schedule; and

32 (b) A written statement containing the following elements:

33 (i) That a refund anticipation loan is a loan, and is not the  
34 borrower's actual income tax refund;

35 (ii) That the taxpayer can file an income tax return electronically  
36 without applying for a refund anticipation loan;

1 (iii) The average times according to the internal revenue service  
2 within which a taxpayer who does not obtain a refund anticipation loan  
3 can expect to receive a refund if the taxpayer's return is (A) filed  
4 electronically and the refund is directly deposited to the taxpayer's  
5 bank account or mailed to the taxpayer, and (B) mailed to the internal  
6 revenue service and the refund is directly deposited to the taxpayer's  
7 bank account or mailed to the taxpayer;

8 (iv) That the internal revenue service does not guarantee that it  
9 will pay the full amount of the anticipated refund and it does not  
10 guarantee a specific date that a refund will be deposited into a  
11 taxpayer's financial institution account or mailed to a taxpayer;

12 (v) That the borrower is responsible for repayment of the loan and  
13 related fees in the event that the tax refund is not paid or paid in  
14 full;

15 (vi) The estimated time within which the loan proceeds will be paid  
16 to the borrower if the loan is approved; and

17 (vii) The fee that will be charged, if any, if the borrower's loan  
18 is not approved.

19 (2) The following additional information must be provided to the  
20 borrower of a refund anticipation loan before consummation of the loan  
21 transaction:

22 (a) The estimated total fees for obtaining the refund anticipation  
23 loan; and

24 (b) The estimated annual percentage rate for the borrower's refund  
25 anticipation loan, using the guidelines established under the federal  
26 truth in lending act (15 U.S.C. Sec. 1601 et seq.).

27 (3) This chapter shall preempt and be exclusive of all local acts,  
28 statutes, ordinances, and regulations relating to refund anticipation  
29 loans. This section shall be given retroactive and prospective effect.

30 NEW SECTION. **Sec. 4.** It is unlawful for a facilitator of a refund  
31 anticipation loan to engage in any of the following activities:

32 (1) Misrepresent a material factor or condition of a refund  
33 anticipation loan;

34 (2) Fail to process the application for a refund anticipation loan  
35 promptly after the consumer applies for the loan;

36 (3) Engage in any dishonest, fraudulent, unfair, unconscionable, or

1 unethical practice or conduct in connection with a refund anticipation  
2 loan; and

3 (4) Arrange for a creditor to take a security interest in any  
4 property of the consumer other than the proceeds of the consumer's tax  
5 refund to secure payment of the loan.

6 NEW SECTION. **Sec. 5.** Any person who knowingly and willfully  
7 violates this chapter is guilty of a misdemeanor and shall be fined up  
8 to five hundred dollars for each offense.

9 NEW SECTION. **Sec. 6.** The legislature finds that the practices  
10 covered by this chapter are matters vitally affecting the public  
11 interest for the purpose of applying the consumer protection act,  
12 chapter 19.86 RCW. A violation of this chapter is not reasonable in  
13 relation to the development and preservation of business and is an  
14 unfair or deceptive act in trade or commerce and an unfair method of  
15 competition for the purpose of applying the consumer protection act,  
16 chapter 19.86 RCW.

17 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
18 a new chapter in Title 19 RCW.

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